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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,671	01/14/2002	Hendrik Johannis Boot	2183-5238US	9315
24247	7590	10/06/2005	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			PENG, BO	
		ART UNIT		PAPER NUMBER
				1648
DATE MAILED: 10/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/046,671	BOOT ET AL.
	Examiner	Art Unit
	Bo Peng	1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-30 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

1. The examiner of your application in the Patent and Trademark Office has been changed.

To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Bo Peng, Art Unit 1648.

2. Upon a review of the prosecution history in this application, the Office has determined that it is necessary to vacate the previous Office action. In order for examination to further proceed expeditiously and with high quality, a restriction requirement is necessary as set forth below. The Office regrets any inconvenience this may cause Applicant.

3. Applicant's preliminary amendment, filed May 1, 2002, is acknowledged. Claims 1-30 are pending.

***Election/Restrictions***

4. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 3, 5-9, and 30, drawn to an infectious recombinant IBDV (rIBDV), classified in class 435, subclass 236.
- II. Claims 2, 4 and 29, drawn to an infectious recombinant IBDV having at least part of the vvIBDV and a vaccine, classified in class 435, subclass 236.
- III. Claims 23-28, drawn to an infectious mosaic IBDV (mIBDV), classified in class 435, subclass 236.
- IV. Claims 10, 12-22, drawn to a method for obtaining an infectious rIBDV, classified in class 435, subclass 463.

V. Claim 11, drawn to an infectious recombinant IBDV having at least part of the vvIBDV, classified in class 435, subclass 463.

5. Groups I-III are different products. Groups I-III are directed to patentably distinct recombinant viruses, wherein each has a different structure and biological property, and wherein each is capable of separate manufacture and use.

6. Groups I- III and IV-V are related as process of making and product made. Groups I-III are directed to recombinant IBDVs, while Groups IV-V are directed to a method of making the recombinant IBDVs. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the method of Groups IV-V for making the recombinant IBDVs could be used for producing viral proteins. The recombinant IBDVs could be made in permissive bursa cells.

7. Groups IV and V are different methods. Methods of generating recombinant viruses differ from each other with respect to permissive cells for the virus production, culture medium and supplements, method steps, and endpoints. Therefore, each method is patentably distinct.

8. These inventions are distinct for the reasons given above. In addition, they have acquired a separate status in the art as shown by different classification and/or recognized divergent

subject matter. Further, even though in some cases the classification is shared, a different field of search would be required based upon the structurally distinct products recited and the various methods of use comprising distinct method steps. Since it is an undue burden for the Office to search more than one invention, a restriction for examination purposes as indicated is proper.

***Species Election***

9. This application contains claims directed to the following patentably distinct species of the claimed invention. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

10. If **Group I** above is elected, Applicant is required to elect ONE rIBDV with specific SEQ ID NO(s).

11. If **Group II** above is elected, Applicant is required to elect ONE rIBDV having at least part of the vvIBDV with specific SEQ ID NO(s).

12. If **Group III** above is elected, Applicant is required to specify ONE mIBDV by specific SEQ ID NO(s).

13. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

14. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

15. Applicant is reminded the upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance the 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bo Peng whose telephone number is 571-272-5542. The examiner can normally be reached on M-F, 9-5:30.

Art Unit: 1648

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

BP



JEFFREY STUCKER  
PRIMARY EXAMINER